

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3331 OF 2016

MR. EDDIE NARIMAN PALIA

...Petitioner

Versus

ASSISTANT CHARITY COMMISSIONER
AND ORS.

...Respondents

....

Dr. Birendra Saraf, Counsel a/w. Rohan sawant, Counsel a/w. Ranjit Shetty, Rohan Agrawal, Apurv Sharma i/b. M/s. Argus Partners, for the petitioner.

Mr. S.D. Rayrikar, AGP, for respondent No.1 – State.

Dr. Veerendra Tulzapurkar a/w. Punit Damodar, Devansh Shah, Rashmin Jain, i/b. Kanga & Co., for the respondent Nos.2 to 5.

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CORAM : R. G. KETKAR, J.

DATE : 23rd MARCH, 2016

P.C.

1. Heard Dr. Birendra Saraf, learned Senior Counsel for the petitioner, Mr. S.D. Rayrikar, learned AGP for respondent No.1 and Dr. Veerendra Tulzapurkar, learned Senior Counsel for respondent Nos.2 to 5, at length.

2. As the regular Court, presided over by Hon'ble Mr. Justice R.M. Savant, has passed an order 'not before me', the petitioner has moved this Court as per the administrative order passed by the Hon'ble the Chief Justice.

3. Rule. Learned Counsel for the respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 22.12.2015 passed by learned Assistant Charity Commissioner, Maharashtra State, Mumbai below Exh.10 in Application No.ACC/HO/2521/2015.

5. Dr. Saraf submitted that the meeting held on 4.6.2015 was illegal and void because notice of that meeting was given in contravention of the provisions of the Trust Deed. There was no item of appointing two trustees in the agenda of the meeting dated 4.6.2015. No sufficient time was given to the trustees to consider the same in time. He submitted that the petitioner has

no objection for deleting the name of Mrs. Ernie Kharshedji Dubash as she expired on 12.1.2013. The petitioner has also no objection for deleting the name of Dr. Villy Cama as she gave resignation as Chairman of the Trust. The petitioner, however, has objection to the appointments of Mr. Adi Jehangir and Mr. Cyrus Nallaseth as trustees being appointed as per the resolution of the trust in the meeting dated 4.6.2015.

6. Dr. Tulzapurkar did not seriously dispute the contention advanced by Dr. Saraf that there was no item of appointing two trustees in the agenda of the meeting dated 4.6.2015. He also did not dispute that no sufficient time was given to the Trustees to consider the said item. He further states that respondent Nos.2 to 5 have no objection for deleting the names of Mrs. Ernie Kharshedji Dubash and Dr. Villy Cama. He submitted that the Assistant Charity Commissioner may be directed to accept the change report so far as the deletion of names of Mrs. Ernie Kharshedji Dubash and Dr. Villy Cama, without further enquiry.

7. Dr. Tulzapurkar submitted that notice dated 28.9.2015 was issued to the trustees, including the petitioner herein,

about convening meeting of the trust on 6.10.2015. Accordingly, the meeting was convened on 6.10.2015. He submitted that in pursuance of the meeting dated 6.10.2015, respondent Nos.2 to 5 will shortly file change report.

8. As learned Counsel for the parties have not disputed deletion of the names of Mrs. Ernie Kharshedji Dubash and Dr. Villy Cama, the Assistant Charity Commissioner is directed to accept the change report for deletion of names of Mrs. Ernie Kharshedji Dubash and Dr. Villy Cama, without further enquiry. As far as rest of the change report is concerned, that also stands disposed of in view of the submissions made by Dr. Tuljapurkar that respondent Nos.2 to 5 will file change report in pursuance of the meeting dated 6.10.2015. Liberty is reserved with the petitioner and others to raise objections. All contentions in that regard are expressly kept open. The petition is disposed of in the following terms :

- [i] The Assistant Charity Commissioner shall accept the change report for deletion of names of Mrs. Ernie Kharshedji Dubash and Dr. Villy Cama, without further enquiry.

- [ii] As far as rest of the change report for addition of the trustees is concerned, the same stands disposed of in view of statement of Dr. Tulzapurkar that the respondent Nos.2 to 5 will shortly file change report in pursuance of the meeting dated 6.10.2015. As and when respondent Nos.2 to 5 will file the change report in pursuance of the meeting dated 6.10.2015, liberty is reserved with the petitioner and others to raise their objections. All contentions in that regard are expressly kept open.
- [iii] Petition is disposed of accordingly. Rule is partly made absolute in aforesaid terms with no order as to costs. Order accordingly.
- [iv] All concerned parties, including the Assistant Charity Commissioner, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)